HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

A.O. No. 1063 of 2001

Gopal Singh & another

Vs.

Commander 21 BRTF (RGEF)

Approved for reporting.

_____

~~Not approved for reporting~~

Date of decision 2-11-2004

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No. 1063 of 2001

(Old No. 758 of 1986)

Gopal Singh and another ……..... Appellant

Versus

Commander 21 BRTF (RGEF) ……..Respondent

Sri C.D. Bahuguna, Advocate for the appellant
Sri Nagesh Agarwal, Advocate for the Respondent.

Dated: 2.11.2004

Hon. Rajesh Tandon J.

Earlier the present appeal was head on 26.8.2004 and judgment was delivered on the same day. Later on the learned counsel for the appellant moved correction/ modification application. The application was allowed vide order dated 4.10.2004 and the judgment and order dated 26.8.2004 was recalled. The judgment was reserved after hearing the case afresh on 14.10.2004.

By the aforesaid appeal the applicant has prayed for setting aside the order passed under workman's compensation Act. The clamant Sh. Bhupendra Singh was working as labour on 2nd March 1979. Near Bajrauli he received grievous injuries and according to him he was getting a sum of Rs. 160/- per month towards the salary and as such the amount of Rs. 23,520/- was claimed by the injured. However later on he expired.

Brief facts giving rise to this appeal are that one Bhupendra Singh, the son of the appellants instituted a claim case no. 6 of 1980 before the Workmen Compensation Commissioner, Pithoragarh under the provisions of the Wrokmen Compensation Act, 1923 with the averments that while working on the road side near a place known as Askot (Pithoragarh) on 2nd March, 1979 as a gang-labour of D.G.B.R., which is a unit of 21 B.R.T.F. (GREF) C/O 56 A.P.O., he received grievous injuries as a result of which he became permanently disabled. It was further averred in the claim Petition that at the time of accident the injured was getting Rs. 160/- per month from the D.G.B.R. and as such he was entitled for compensation from the opposite party to the extent of Rs.23,520/-.

The injured died on 27.03.1980 e.i. after about a year. Thereafter the appellants who are the parents of the deceased Bhupendra Singh were substituted as claimants in the claim application. The father of the deceased, namely, Gopal Singh appeared in the witness box as P.W.-1 to support the averments made in the claim application. He has stated on oath before the Workmen Compensation Commissioner, Pithoragarh that on the fateful day i.e. 02.03.1979, while working on the road side his son Bhupendra Singh sustained grievous injuries and he was medically treated at Askot hospital from 2nd March to 15th March 1979 and thereafter he was shifted to Govt. hospital, Pithoragarh for further treatment. He has stated as under:-

"जब से इसे चोट आई, इसका दिमाग घबराता था। पिथौरागढ़ अस्पताल से मृतक घर आया जिसका अस्कोट अस्पताल में इलाज कराया, और उसकी मृत्यु 27 मार्च 1980 को अस्पताल से घर ले जाने समय रास्ते में हो गई।"

In cross examinations, the P.W.-1 Gopal Singh categorically stated that his son died due to the injuries sustained by him earlier. The relevant portion is reproduced to below:

"मेरा लड़का चोट आने से सालभर बाद मरा। खुद कहा कि उन्हीं चोटों से लड़के की मौत हुई।"

The statement of the P.W.-1 to the effect that after the accident his son has not recovered and he had mental problem with him and that his son died due to the injuries sustained by him in the accident dated 02-03.1979 stood unrebutted.

P.W.-2 Har Singh is also a gang-labour and is an eyewitness of the accident as he was working with the deceased on the same roadside on the date of accident. He has stated that deceased Bhupendra Singh has sustained grievous injuries on the road-site. He has categorically stated that after 2nd March 1979 the deceased Bhupendra Singh did not work as a labour. The relevant statements are reproduced to below:

"2 मार्च के बाद कभी भूपेन्द्र सिंह गैग में काम पर नहीं आया। विभाग का यह कहना गलत है कि भूपेन्द्र सिंह 02 मार्च से 15 मार्च तक लगातार काम पर आता रहा।"

Dr. Kalyan Singh who had medically examined and treated the injured Bhupendra Singh initially in the Govt. hospital, Askot on 02-03-1979. He appeared as P.W.-3 before the Workmen Compensation Commissioner, Pithoragarh and he has proved his medical report regarding injuries sustained by theinjured Bhupendra Singh on 02-03-1979. The relevant statement is reproduced below:

"यह कहना गलत है कि जो injuries मैने अपने प्रमाण पत्रों मे दिखाई हैं उससे यह मौत नहीं हो सकती है, बल्कि हो सकती है। सिर की चोट से मैं कह सकता हूं कि इससे मृत्यु हो सकती है।"

The Workmen Compensation Commissioner, Pithoragarh has rejected the claim of the claimants/appellants on the ground that there has not been any co relation with the work and the accident leading to the death of the injured. In this connection it may be mentioned that the respondent did not produce any evidence before the Workmen Compensation Commissioner, Pithoragarh to the effect that from the

date of accident till the date of death of the injured, i.e. for a period of about one year the injured worked any where in any private or public establishment. Thus the injured remained incapacitated during the period of one year from the date of accident to do any manual work due to the injured sustained by him in the accident dated 02-03-1979. The finding reached by the Workmen Compensation Commissioner, Pithoragarh to the contrary on this point is erroneous and is liable to be set aside.

Counsel for the applicant has submitted the Judgment of the Apex Court in 1979 A.C.J. Page 419-Messrs. Mackinnon Mackenzie & Co. Pvt. Ltd. V. Ritta Farnandes where it has been held as under:-

3. Section 3 of the Wrokmen's Compensation Act, 1973 reads as follows:

"(1) If personal injury is caused to a workman by accident arising out and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

Provided that the employer shall not be so liable-

"(a) in respect of any injury which does not result in the total or partial disablement of the workmen for a period exceeding three days:

(b) in respect of any injury, not resulting in death: caused by an accident which is directly attributable to-

- *(i) the workmen having been at the time thereof under the influence of drink or drugs, or*
- *(ii) the willful disobedience of the workmen to an order expressly given, or to a rule expressly framed for the purpose of securing the safety of workmen, or*
- *(iii) the willful removal or disregard by the workmen of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen.*

It is well established that under this section there must be some casual connection between the death of the workman and his employment. If the workman dies as a natural result of the disease from which he was suffering or while suffering from a particular disease, he dies of that disease as a result of wear and tear of his employment, no liability would be fixed upon the employer. But if the employment is a contributory cause or has accelerated the death or if the death was due not only to the disease but the disease coupled with the employment then it could be said that the death arose out of the employment and the employer would be liable.

4. *Even if a workman dies from a pre-existing disease, if the disease is aggravated or accelerated under the circumstances, which can be said to be accidental, his death results from injury by accident. This was clearly laid down by the House of Lords in Clover Clayton & Co. V. Hughes*[1] *where the deceased, whilest tightening a nut with a spanner, fell-back on his hand and died. A post mortem examination showed that there was a large aneurism of the aorta, and that death was caused by a rupture of the aorta. The aneurism was in such an advanced condition that it might have burst while the man was asleep, and very slight exertion or strain would have been sufficient to bring about a rupture. The County Court Judge found that the death was caused by a strain arising out of the ordinary work of the deceased operating upon a condition of body which was such as to render the strain fatal, and held upon the authorities that this was an accident within the meaning of the Act. His*

decision was upheld both by the Court of Appeal and the House of Lords:

"No doubt the ordinary accident," said Lord Loreburn, L.C. "is associated with something external: the bursting of a boiler or an explosion in a mine, for example. But it may be merely from the man's own miscalculation, such as tripping and falling. Or it may be due both to internal and external conditions, as if a seaman were to faint in the rigging and tumble into the sea. I think it may also be something going wrong within the human frame itself, such as straning of muscle or the breaking of a blood vessel. If that occurred when he was lifting a weight, it would properly be described as an accident. So, I think, rupturing an aneurism when tightening a nut with a spanner may be regarded as an accident."

With regard to Lord Macnanghten's definition of an accident being "an unlooked to mishap or untoward event which is not expected or designed" it was said that an event was unexpected if it was not expected by the man who suffered it, even though everyman of commonsense who knew the circumstances would think it certain to happen.

The counsel for the appellants has further referred the Judgment in the case of Durbshan B. Curseetjees Sons, Kakinada V. D. Sesharathnam reported in 1987 ACJ Page 467. The observation are quoted below:-

The only question is whether he died due to the accident. It is admitted that Narayana Rao sustained head injuries in an accident occurred on May1, 1976 and he was treated for those injuries and thereafter, he took some rest and joined duty. The question is whether he died as a result of the earlier injuries sustained by him? The finding of the lower authority is that the earlier accident has contributed to accelerating his death due to the stress and strain in

the rush of work. Therefore, it must he held that he deceased died due to the accident occurred on May 1, 1976. In a given case where medical evidence is adduced, and an inference cannot be drawn that he died due to the accident the claimant is not entitled to compensation. But each case has to be considered, on its own facts and circumstances. In this case, admittedly the deceased sustained head injuries in an accident while on duty. He underwent treatment. Subsequently, he joined duty. While on duty, he died. It is also in evidence that the work he discharges causes stress and strain. It is now well settled that the injury sustained in an accident may accelerate or contribute to the disablement causing even the death even after a lapse of some period. In this case, the court below has drawn, in my view, quite rightly an inference that the stress and strain in the rush of work must have accelerated the cause of the death due to the accident which occurred earlier. This inference drawn by the Tribunal below can not be said to be unwarranted on the facts and circumstances. Accordingly, I hold that the death has occurred while the deceased Narayaya Rao was on duty due to the accident and therefore, the respondent is entitled to compensation.

It is really shocking that although the finding has been recorded by the Commissioner Workman Compensation Act that the claimant has received the injuries during the course of employment, but has refused to allow the compensation. The injuries were the basic factor, which resulted the cause of death of the applicant. The commissioner Workman Compensation, therefore has illegally rejected the claim of the applicant to the extent 23,520/-

The appeal is allowed. Respondents are directed to pay a sum of Rs.23,520/- (Rupees twenty three thousand five hundred and twenty only) along with pendente lite and future interest at the rate of 9% per annum to the petitioner within six weeks.

No order as to costs.

(Rajesh Tandon, J.)

Dated:2.11.2004
*Dhyani